

AGENDA ITEM #6  
April 29, 2008

**Introduction**

**MEMORANDUM**

April 25, 2008

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Introduction:** Zoning Text Amendment 08-07,  
Alternative Review Committee - Functions

Zoning Text Amendment (ZTA) 08-07 is sponsored by the District Council at the request of the County Executive. ZTA 08-07 is scheduled to be introduced on April 29, 2008. A public hearing will be held on June 17 at 1:30 p.m. if the Council approves the attached resolution.

Currently the Alternative Review Committee has authority to allow certain development plans and project plans to exceed the density or building height limits recommended by the applicable master plan. ZTA 08-07 would remove any mention of the Alternative Review Committee from the Zoning Ordinance. The Planning Board would be authorized to approve certain plans that exceed the density or building height limits recommended in the applicable master plan to permit the construction of all Moderately Priced Dwelling Units (MPDUs) and bonus units on-site.

The Alternative Review Committee was established under §25A-5A of the County Code for the purpose of allowing development flexibility for MPDUs. Two bills before the Council (Bill 07-38 and 07-13) would eliminate the Committee. Subdivision Regulation Amendment 08-02 would eliminate references to the Alternative Review Committee from the Subdivision Regulations.

Zoning Text Amendment No: 08-07  
Concerning: Alternative Review Committee  
- Functions  
Draft No. & Date: 1 – 4/17/08  
Introduced: April 29, 2008  
Public Hearing: June 10, 2008  
Adopted:  
Effective:  
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: The District Council at the request of the County Executive

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- remove the Alternative Review Committee from the development plan and project plan approval processes;
- allow certain development plans or project plans to exceed density or building height limits to permit the construction of all MPDUs and bonus units on-site; and
- generally amend provisions relating to Development Plans and Project Plans.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-D-1	“DEVELOPMENT PLAN”
Section 59-D-1.6	“Approval by district council”
Section 59-D-1.61	“Findings”
DIVISION 59-D-2	“PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES”
Section 59-D-2.4	“Action by planning board”
Section 59-D-2.42	“Findings required for approval”

**EXPLANATION:** ***Boldface** indicates a heading or a defined term.*

*Underlining indicates text that is added to existing laws  
by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from  
existing law by the original text amendment.*

*Double underlining indicates text that is added to the text  
amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted  
from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*

## *ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-D-1 is amended as follows:**

**DIVISION 59-D-1. DEVELOPMENT PLAN.**

\* \* \*

**59-D-1.6. Approval by district council.**

**59-D-1.61. Findings.**

Before approving an application for classification in any of these zones, the District Council must consider whether the application, including the development plan, fulfills the purposes and requirements in Article 59-C for the zone. In so doing, the District Council must make the following specific findings, in addition to any other findings which may be necessary and appropriate to evaluate the proposed reclassification:

- (a) The [zone applied for] proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. [However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If the

Committee finds that the development would not be financially feasible, the Planning Board must recommend to the District Council which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

- (1) exceeding an applicable height limit, lower than the maximum height in the zone, that was recommended in a master plan or sector plan,
- (2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that was recommended in a master plan or sector plan, or
- (3) locating any required public use space off-site.]

However, to permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a development plan may exceed:

- (1) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but not to exceed the maximum density of the zone; and
- (2) any building height limit recommended in a master plan or sector plan, but not to exceed the maximum height of the zone.

The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units.

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**Sec. 2. DIVISION 59-D-2 is amended as follows:**

**DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF  
DEVELOPMENT, CBD ZONES AND RMX ZONES.**

\* \* \*

**59-D-2.4. Action by planning board.**

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**59-D-2.42. Findings required for approval.**

The fact that an application complies with all of the specific requirements and intent of the applicable zone does not create a presumption that the application must be approved. The Planning Board can approve, or approve subject to modifications, an application only if it finds that the proposed development meets all of the following requirements:

(a) It would comply with all of the intents and requirements of the zone.

(b) It would conform to the applicable sector plan or urban renewal plan.

[However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a project plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable

density or height limit. If the Committee finds that the development would not be financially feasible, the Planning Board must decide which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

- (1) exceeding an applicable height limit, lower than the maximum height in the zone, that is recommended in a master plan or sector plan,
- (2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that is recommended in a master plan or sector plan, or
- (3) locating any required public use space off-site.]

However, to permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a project plan may exceed:

- (1) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but not to exceed the maximum density of the zone; and
- (2) any building height limit recommended in a master plan or sector plan, but not to exceed the maximum height of the zone.

The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units.

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104       **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of  
105 Council adoption.

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107 This is a correct copy of Council action.

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110 Linda M. Lauer, Clerk of the Council



Resolution No:  
Introduced: April 29, 2008  
Adopted: April 29, 2008

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND

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By: The District Council at the request of the County Executive

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Subject: Notice of Public Hearing on Zoning Text Amendment 08-07

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within 30 days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 08-07, introduced on April 29, 2008, would amend the Zoning Ordinance to remove the Alternative Review Committee from the development plan and project plan approval process. The Planning Board would be authorized to approve certain plans to exceed density or building height limits recommended in a master plan to permit the construction of all Moderately Priced Dwelling Units (MPDUs) and bonus units on-site.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following resolution:

Legal notice will be given of the public hearing to be held on June 17, 2008 at 1:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council